



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF N-P-

DATE: SEPT. 25, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician working in the area of pediatric critical care, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and asserts that the Director misapplied the third prong of the *Dhanasar* framework and did not perform the required balancing test. He contends that his proposed work as a pediatrician, researcher, and director of quality is in the national interest, and thus that a waiver of the job offer requirement should be granted.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>3</sup> The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working in a pediatric critical care fellowship at the [REDACTED] in [REDACTED], New York. When responding to the Director's request for evidence (RFE), the Petitioner indicated that upon completing this fellowship in June 2017, he accepted a position as a pediatric intensivist and director for quality of the Pediatric Intensive Care Unit (PICU) at [REDACTED] in [REDACTED], Indiana.<sup>4</sup>

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner initially described his proposed endeavor in Part 6 of Form I-140 as "provide medical care to infants and children, whose unstable critical conditions require a pediatric intensive care specialist; under the supervision of an attending physician." His support letter stated that his "improvements in intensive care patient safety and quality are being spread to intensive care units across the United States" through his conference presentations and training of pediatric residents at [REDACTED]. In response to the Director's RFE, the Petitioner submitted a letter from [REDACTED], President of the [REDACTED], which indicates that in addition to his clinical duties as a pediatric intensivist, the Petitioner also is responsible for "working on improving pediatric intensive care unit healthcare outcomes," "educating nurses and medical residents," and acting as a community liaison. When addressing this prong of the *Dhanasar* framework in his RFE response, the Petitioner's support letter describes him as "an innovator in patient safety and quality improvement in pediatric intensive care unit operations." The letter also focused on provisions of

<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> The Petitioner presented copies of his diplomas for his bachelor of medicine and bachelor of surgery degree from [REDACTED] in [REDACTED], India and doctor of medicine (pediatrics) degree from [REDACTED] in [REDACTED], India. See 8 C.F.R. § 204.5(k)(3)(i)(A).

<sup>4</sup> We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether he satisfies the *Dhanasar* framework, he need not have a job offer from a specific employer as he is applying for a waiver of the job offer requirement.

the Affordable Care Act that emphasize value and quality in patient care, concluding that “physicians with expertise in quality improvement and operations management have become a resource of national importance.” On appeal, the Petitioner defines his proposed endeavor as “clinical research and practice in the field of pediatric critical care medicine.” We find that the Petitioner’s proposed work as a critical care pediatrician, an educator of pediatric nurses and medical residents, and as an innovator in intensive care patient safety and quality has substantial merit.<sup>5</sup>

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. The record includes information from the official Medicare website regarding its focus on the provision of “high quality services” by hospitals, as well as an article that discusses state approaches to the same topic. In addition, a letter from Professor [REDACTED] of [REDACTED] School of Medicine describes the Petitioner’s development and implementation of a “pediatric validated assessment tool” called the [REDACTED] which “can be, and should be, implemented by other pediatric ICUs...” The record indicates that the Petitioner presented an abstract describing this work at a medical conference. Therefore, to the extent that the Petitioner proposes to continue to share his innovation in patient care safety and quality through dissemination at professional conferences and scholarly journals, we find that he has established that this endeavor has national importance, and meets the first prong under the *Dhanasar* framework.<sup>6</sup>

#### B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The Petitioner submitted documentation of his academic credentials, medical qualifications and licenses, and articles published in medical journals. He also submitted reference letters from colleagues, collaborators, and other experts which describe his medical training, previous patient care quality and safety projects, as well as his previous clinical research.<sup>7</sup> Upon review of this evidence, we find it does not establish that the Petitioner is well positioned to advance his proposed endeavor of improving patient safety and quality in the field of pediatric critical care.

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<sup>5</sup> While the Petitioner uses the phrase “clinical research” in describing his proposed endeavor on appeal, he has not identified specific research projects in his field that he intends to carry out at [REDACTED] or elsewhere, nor has he otherwise indicated the capacity in which he intends to perform research prospectively. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. Because the record lacks information about the nature of any future research, we have focused our analysis on the Petitioner’s proposed clinical practice and his operational safety and quality initiatives.

<sup>6</sup> With respect to the Petitioner’s proposed care and treatment of patients and educational duties, while these endeavors have substantial merit, the record does not establish their national importance. The Petitioner has not established that his clinical practice and training of medical residents would impact the field of pediatric critical care more broadly, as opposed to being limited to the patients he serves and his trainees. Similarly, in *Dhanasar*, we determined that the Petitioner’s teaching activities did not rise to the level of national importance because they would not impact his field more broadly. *Dhanasar*, at 893.

<sup>7</sup> While not all of the reference letters are mentioned in our analysis, all of them were thoroughly reviewed and considered.

For example, [REDACTED] clinical assistant professor of pediatrics at the [REDACTED] writes that while at [REDACTED] the Petitioner's "involvement in the research to determine the use of the [REDACTED] device to assess the nutritional status of critically ill children was especially noteworthy," and suggests that the results of this project will be beneficial for patients in "hospitals throughout the United States." He also notes that the Petitioner was "instrumental in developing and implementing the [REDACTED] at [REDACTED] a quality improvement project that is now part of the hospital's record management system and improved nurses' ability to recognize signs of iatrogenic withdrawal symptoms in the PICU. However, this evidence does not demonstrate that the Petitioner's work has impacted the field of pediatric critical care more broadly. Nor does the record otherwise show that this project constitutes a record of success or that it has garnered a level of interest from relevant parties rendering the Petitioner well positioned to advance the proposed endeavor.

Similarly, the previously-mentioned letter from [REDACTED] notes the same two projects described by [REDACTED] but does not indicate that these projects have drawn interest from other pediatricians or that the Petitioner's work has been implemented in other PICUs. Also, while [REDACTED] states that the Petitioner "has improved the overall work flow and quality within the pediatric ICU," he does not indicate what connection or experience he has with [REDACTED] if any, to demonstrate the basis of his knowledge.

In his letter, [REDACTED] states that the Petitioner's "quality and safety research" performed at [REDACTED] "made him an ideal candidate for our organization," and describes a community outreach program using social media that he initiated at [REDACTED] [REDACTED] also indicates that since the Petitioner began his employment, "we have already seen many changes and developments in the pediatric intensive care unit that have improved the quality of healthcare received by patients."

In addition, the Petitioner submitted a letter from [REDACTED] Clinical Assistant Professor at the [REDACTED] School of Medicine. She indicates that the Petitioner developed a "nursing rounding tool" while at [REDACTED] and has now implemented this tool at [REDACTED] "to provide efficient and effective patient care." While [REDACTED] states that she holds a similar position to the Petitioner's and that his ideas "will surely address some important quality issues which have come to the forefront of medicine recently," she does not indicate that she has implemented or plans to implement these ideas at her hospital, or that she is aware of hospitals other than [REDACTED] or [REDACTED] that have done so or plan to do so. A similar statement appears in a letter from [REDACTED] of [REDACTED] who writes that the quality improvement tools developed and implemented by the Petitioner "can generally be adapted for use in smaller community hospitals, such as the hospital where I now practice." These letters do not demonstrate that the Petitioner has achieved a level of past success or progress that would render him well positioned to advance his proposed endeavor.

The record also includes the Petitioner's curriculum vitae, in which he lists several medical conferences where he presented abstracts on the quality care and patient safety projects mentioned in these letters. However, the Petitioner has not submitted evidence to support these claims, such as the

abstracts themselves or evidence of their inclusion in the proceedings of these conferences. In addition, while the letter writers compliment the Petitioner's work and state that these improvements could be applied to other PICU departments, none of them state that they are aware of their implementation at hospitals other than those that employed him. He has therefore not established that there has been interest in the projects described in these letters from other hospitals or other relevant entities.

Further, while we noted above that the Petitioner's proposed endeavor of clinical research lacked sufficient specificity to establish qualification under the first prong, we further find that the evidence regarding his previous clinical research does not demonstrate a record of success sufficient to establish that he is well positioned to advance this research. The record includes evidence that the Petitioner co-authored four articles based upon his previous clinical research that were published in medical journals. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his or her proposed research. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Dhanasar* at 890. The Petitioner has not shown that his clinical research has served as an impetus for significant progress in the field of pediatric critical care, or that it has generated substantial positive discourse in the broader pediatrics community. Nor does the evidence otherwise demonstrate that his clinical research work constitutes a record of success or progress in his area of research. Accordingly, we disagree with the Director and find that the Petitioner does not meet the second prong of the *Dhanasar* framework.<sup>8</sup>

### C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the Petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. The Director found that because the Petitioner had already obtained a labor certification, it could not be considered to be impractical for him to obtain a labor certification. In addition, the Director noted that the Petitioner had not established that a waiver was needed in the interest of urgency, or that his contributions are of such value that they would benefit the United States even if other qualified U.S. workers were available.

On appeal, the Petitioner asserts that the Director misapplied the third prong, and that a shortage of physicians in the United States essentially means that the national interest in the protection of the labor market afforded by the labor certification process is diminished such that any qualified physician would pass this balancing test. We do not find support for the Petitioner's position that a worker shortage eliminates the benefits of a process designed to protect U.S. workers and therefore

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<sup>8</sup> We note that the Director concluded the Petitioner was well positioned to advance his proposed endeavor without identifying or analyzing the evidence on which she based this finding.

significantly tilts the balancing test in a physician's favor. We note that the U.S. Department of Labor in fact addresses shortages of qualified workers through the labor certification process, and through its Schedule A regulations<sup>9</sup>, which remove the recruitment requirements for those positions where it has determined there are not sufficient U.S. workers. In addition, a separate, non-discretionary national interest waiver exists for physicians committed to practicing in underserved areas.<sup>10</sup> In setting forth the balancing test for the discretionary national interest waiver sought in this case, the *Dhanasar* decision did not indicate that a shortage would affect the balance, but instead focused on factors in the national interest that could *outweigh* "the benefits inherent in the labor certification process." *Id.* at 890-91.<sup>11</sup>

We agree with the Petitioner's assertion that the fact that an individual is the beneficiary of an approved labor certification does not act as a bar to a discretionary national interest waiver. However, this point can be material when considering the factors under the third prong of the *Dhanasar* framework. For example, any assertion that it would be impractical for the Petitioner to obtain a labor certification is clearly undermined by the fact that he has already obtained one.

Another factor set forth in *Dhanasar* is the urgency of the need for the Petitioner's contributions. Although the Petitioner argued in response to the Director's RFE that the labor certification process restricts his ability to directly provide his services in patient care safety and quality to PICUs at other hospitals, he has not shown an urgent national interest in his own contributions to such organizations.<sup>12</sup>

A third factor is whether, in light of the national importance of the Petitioner's endeavor and his positioning to advance it, the benefits to the national interest of the United States would outweigh those inherent in the labor certification process, even assuming that other qualified U.S. workers are available. The Petitioner asserts that his status as a specialist in the field of pediatric critical care, a published author, and a clinical researcher, as well as his work in striving to lower healthcare costs and improve health care outcomes for children in intensive care units, tips the balance in favor of the granting of a discretionary national interest waiver. However, as we noted in our analysis under the second prong, the Petitioner has not sufficiently established that his work at [REDACTED] and [REDACTED] has resulted in interest from other hospitals in implementing his patient care quality and safety improvements, or that he is otherwise well positioned to advance this proposed endeavor.

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<sup>9</sup> See 20 C.F.R. § 656.5

<sup>10</sup> See section 203(b)(2)(B)(ii)(I) of the Act.

<sup>11</sup> Although the list of factors was non-exhaustive, we note that the enumerated factors are all variable considerations related to the foreign national and the national interest in his or her proposed work, while the benefits of the labor certification process are characterized as "inherent."

<sup>12</sup> We also note that the Petitioner has asserted his safety and quality work stands to impact other hospitals through dissemination of his knowledge via professional publications and conference presentations, and he has not indicated or established that the labor certification process would prevent him from having such an impact.

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Therefore, upon review of the record and consideration of the factors set forth in *Dhanasar*'s third prong, we do not find that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

### III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established that he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-P-*, ID# 1519707 (AAO Sept. 25, 2018)